

# The Right to Liberty versus the Right to Welfare: A Reply to Sterba

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I wish to thank the American Society for Value Inquiry for making possible the discussion of portions of my book *The Passion for Liberty*. In these remarks I will address, once again, the contention that welfare rights exist that are derivable from the libertarian idea of natural individual (negative) rights.

My main concern with the alleged existence of welfare rights is that if one had such a right, then one would have legal justification for depriving another of his or her life, liberty, and property, to which this other has well defended negative (non-welfare) rights. So I am not at all inclined to agree with James Sterba, to his chagrin, I am sure. Indeed, my passion for liberty—including my book by that title a small portion of which he was so kind to discuss—arises from my dismay and disapproval with efforts to derive a right to welfare, that is, provisions for those in dire need, from *coercing* people to give up their property, be they rich, poor, tall, short, pretty, or homely. And not only is this idea misguided, but the very notion of relying on governments to allocate expropriated wealth to the needy is odd if one grasps the message of public choice theory in which it is shown that the beneficiaries of legally backed “welfare rights” are actually not mainly those in dire straits. In fact, huge groups of potential voters, including members of labor unions and corporate shareholders, are the largest beneficiaries of welfare rights.<sup>1</sup>

Let me get to some of the salient points in Sterba’s comments. I want to dispose, first, of the concept of “surplus wealth,” which as far as I can tell is conceptually dependent on a Marxian economic analysis in which it refers to the wealth the capitalist class has acquired by means of exploiting the working class. Given Marx’s view that capitalists do not contribute to the value of the product or service they take to market and exchange there for money, of which they use but a fraction to pay a subsistence wage to the working class, the exchange value minus this subsistence wage gives us the

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<sup>1</sup> James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor, MI: University of Michigan Press, 1962).

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surplus. In Sterba's analysis, however, there is no such explanation by which the surplus might conceivably be measured, so there is simply no way to tell what the surplus wealth he keeps referring to comes to. At times he suggests that all of what does not amount to what the wealthy *basically need* qualifies as surplus. However, the concept of "need" is entirely too fluid to be useful as any kind of objective measure for what it is that rightfully belongs to people. Does an artist need the studio in which his or her art is created? Does a novelist need yet another hide-away where the next novel will be written? Does the basketball star need the triumphant limo ride taken after having helped the team win the championship? These matters are so situational, so much a matter of individual context, that to apply any sort of general bureaucratic measure to them would hopelessly be arbitrary. They call to my mind talk about surplus health or beauty or charm or some other attribute or possession that is desirable.

A further point, one I have been stressing in all of my discussion with philosophical/political adversaries, is that no one can be violating a right if one's nonexistence would leave the victim in the same position as one's supposed rights-violation does. Take the right to health care, which is a typical and widely championed welfare right on the part of those who support the welfare state. I am innocently sick and I cannot afford to meet the terms of the health-care specialist who has the skills and time to service me—that specialist wants to earn an income and has already done all of the charitable work that he or she can contribute *pro bono*. But I have a welfare right to the service. If the health-care specialist did not exist, I would still be in need of health care. So, the health-care specialist could not be depriving me of something, or violating any right of mine, by not servicing me since even without his or her existence I would be without the service. Furthermore, legally requiring a health-care specialist to provide the service—which is where the bite of the welfare right takes place—is not returning to the patient something that belongs to him or her, but is depriving the health-care specialist of something that belongs to him or her (so long as no free commitment was made to provide the service, as might have a doctor in a charitable hospital). What is that? A segment of the health-care specialist's life-time, including what it took to obtain the education and training (assuming it wasn't gained in exchange via a contract to provide future services to the patient in question).

At one point Sterba says that those in dire straits—say someone who is drowning—do have the right to be helped (e.g., by taking some resources that would help them to safety) if they are not provided with voluntary help. In fact, they most likely ought to be helped but have no right to the help. We aren't the slaves of others, even when they are in dire need. We must have our human dignity—our capacity for choosing between right and wrong conduct—respected even when failing to do the right thing can be devastating.

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That is a price of civilization, of treating people as sovereign citizens rather than as subjects of the will of others. If circumstances are so drastic that morality is impossible—if matters have reverted to a Hobbesian state-of-nature situation—talk not only of rights (in the Lockean sense), but also of ethics is quite moot (although not out of the question). As Locke is supposed to have put it, if peace is impossible, rights become irrelevant.<sup>2</sup>

If those against whom the welfare rights case is most telling, namely, people from whom services or taxes are taken, had not existed, their skills or wealth would equally not exist and those who allegedly have welfare rights to obtain such skills or wealth would have none to take. Neither keeping their services or wealth, nor not existing would constitute victimization of those who allegedly have welfare rights, for that makes no sense. How can someone violate a right without existing to do the violation? They may be morally amiss, but they aren't criminals for such failures in a just legal system.<sup>3</sup>

Sterba's view that the welfare right is a negative right because it is a prohibition against anyone's stopping the rights-holder from taking from others their surplus wealth is so bogged down in question-begging conceptual underpinnings that it is highly doubtful that it can be made into a coherent thesis. If, indeed, the so-called surplus wealth belongs to the holder of this wealth—come by either through earning it, having it given freely by others in trade or as a gift, or just having found it lying around before anyone else came to acquire it (say, as a consequence of a personal asset such as one's good health or looks or inheritance)—the taking of it violates a right already and no one can have a right to violate another's rights. Rights must be *compossible*.

Some people do find resources lying around and ready to be used and they take possession of these—"manna from heaven." Even this involves some of their time being invested in the acquisition process. Others might have done this had the former not done it and, in a society with extreme

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<sup>2</sup> Quoted in H. L. A. Hart, "Are There Any Natural Rights?" in A. I. Melden, ed., *Human Rights* (Belmont, CA: Wadsworth Publishing Company, 1970), p. 61, n. 2: "In conditions of extreme scarcity this distinction between competition and coercion will not be worth drawing: natural rights are only of importance 'where peace is possible' (Locke) . . . ."

<sup>3</sup> For the constitution of such a system, see Randy E. Barnett, *Restoring the Lost Constitution: The Presumption of Liberty* (Princeton, NJ: Princeton University Press, 2004).

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scarcity, this may be the norm (which is the source of the Lockean proviso anxiety that was so neatly disposed of by Robert Nozick).<sup>4</sup>

Yet even in such a society much of the wealth is the result of people taking the initiative to learn skills others could use, or to transform nature by making it valuable to people who want to eat, have shelter, travel, etc. If those who produce these valuable items—food, shelter, transportation, etc.—did not exist, there wouldn't be such items available to trade, to earn money from, and then to devote to welfare rights-holders or to tax so as to cover their expenses. So, in the bulk of cases without those who supposedly violate welfare rights by refusing to provide what they have for the alleged welfare rights-holders, the latter would still be without what supposedly they lack because the wealth owner allegedly violates their rights.

Thus, welfare rights are not negative but positive rights, rights to be provided for by coercing other persons to release what belongs to them and what would not exist without their existing or their having produced them.<sup>5</sup> People can, of course, gain even great wealth simply by being born with two healthy kidneys or eyes or a very attractive face or a great deal of valuable talent. By taking from them what they were born with or have created or produced, their lives have been invaded, indeed, shortened. (This is one reason why people are concerned that they “work for the government” for

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<sup>4</sup> John Locke himself makes clear that it is the free society in which no monopolization of resources is likely. See John Locke, *Two Treatises of Government* (London: Everyman, 1993), p. 133, where he states:

[H]e who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind. For the provisions serving to the support of human life, produced by one acre of enclosed and cultivated land, are (to speak much within compass) ten times more, than those, which are yielded by an acre of Land, of an equal richness, lying waste in common. And therefore he, that encloses Land and has a greater plenty of the conveniences of life from ten acres, than he could have from an hundred left to Nature, may truly be said, to give ninety acres to Mankind.

<sup>5</sup> I use “coercing” instead of “forcing” to mean the use of force against persons who have not acted in ways that justify this—for example, who are not defending their lives or their property. “Forcing” doesn't capture what coercion involves since, like violence, it doesn't include reference to whether the forceful action is rights-violating or not. Coercing someone involves violating his rights. See, e.g., the Encarta online dictionary, available online at: [http://encarta.msn.com/dictionary/\\_coercion.html](http://encarta.msn.com/dictionary/_coercion.html), which defines “coercion” as “force used to compel somebody: force used to make somebody do something against his or her will.” (Consider, in this connection, that one may be forced to work by circumstances—that is, without work, one will go hungry—where no coercion is involved.)

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nearly 40 percent of their working time and are deprived of their wealth, which includes the fruits of their assets and work, against their will. This is why Nozick said that taxation “is on a par with forced labor.”<sup>6</sup>)

On an older dispute between Sterba and me, I never conceded that libertarianism of the sort I defend yields welfare rights. Sterba says I have stated that he is right in principle but for practical purposes it doesn’t matter. But I haven’t seen any reference to my having said such a thing and, if I did say it, it was in error. I have, of course, reiterated a point I have made before, namely, that in some rare (“desert island,” “life raft”) cases persons may disregard other’s property rights, maybe even other rights, since they will have been cast into circumstances in which—to use a phrase H. L. A. Hart associated with John Locke—“politics is impossible,” one in which we are in a sort of exceptional virtual Hobbesian state of nature, not in civil society.<sup>7</sup>

That a rich account of basic human individual rights does not fully, perfectly—geometrically—deal with every conceivable social eventuality (the desert island, life-raft sort of cases) isn’t the liability that Sterba makes it out to be for the libertarian. Every political theory can be confronted with such cases. The best thing one can say about them is: “If they think about it hard, they will probably figure out what to do that is as close to being civilized, morally decent as possible, even if the legal system that rests on an up-to-date rights theory hasn’t yet addressed such problems. Otherwise, it will have been a tragic situation.” (Douglas B. Rasmussen and Douglas J. Den Uyl have dubbed the general principles that ground a legal system “metanormative” to indicate that they are fashioned so as to make a morally significant life possible for citizens, without promising to leave nothing further to be figured out as social life develops into yet-unheard-of circumstances.<sup>8</sup>)

Here are a few additional specific points about what Sterba says in his admittedly friendly review.

(1) In *Individuals and Their Rights* I do not accept welfare rights in principle but reject them in practice. Such a dichotomy doesn’t exist, as I see things. Now and then, in desperate circumstances, rights may have to be disregarded—in the middle of an earthquake or typhoon or in the midst of a famine. Morality will have to be developed for unheard-of situations on the spot, if time and circumstances permit.

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<sup>6</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169.

<sup>7</sup> See Hart, “Are There Any Natural Rights?” in Melden, ed., *Human Rights*, p. 61, n. 2.

<sup>8</sup> Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991).

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(2) Basic rights are not conditional but socio-politically categorical. Otherwise, they cannot function as standards of justice guiding the legal system and will be open to manipulation by individuals in the system as they feel inclined.

(3) The American poverty level is irrelevant to the debate about what basic rights human beings have. Rights pertain to how we must treat one another, be we rich, poor, pretty or ugly, tall or short, talented or inept. Basic rights stem from our basic humanity, not some special condition (a bit akin to Rawls's "veil of ignorance"<sup>9</sup>). They establish our "moral space."

(4) The poor, as Thomas Sowell has argued, remain poor, on average, for about five years, and then change places with the not poor.<sup>10</sup> And American levels of poverty are notoriously relative.

(5) I never claimed that the oppressed have the responsibility to throw off their oppressors. They may have some responsibility to work against the oppressors, but not to achieve any given result. It is the oppressors who ought to cease their oppression and others, in sympathy with the oppressed, may have moral obligations to help the oppressed.

(6) Whether I want to or do not want to redistribute wealth isn't the issue. In fact, when it comes to past injustices having garnered illicit wealth for some, a just way to rectify matters is very much what I would want. Thus, say, when feudal holdings, gained on the backs of serfs, last into the new capitalist regimes, that is very regrettable and if at all possible should be avoided—though Nuremberg-type trials, in the absence of out and out war crimes, are difficult to arrange. (This is a

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<sup>9</sup> As I explain in my *Human Rights and Human Liberties* (Chicago, IL: Nelson-Hall, 1975).

<sup>10</sup> See, e.g., Thomas Sowell, "Stretching the Poor," January 22, 2004, available online at: [http://www.newsbull.com/forum/topic.asp?TOPIC\\_ID=10509](http://www.newsbull.com/forum/topic.asp?TOPIC_ID=10509).

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matter that I discuss elsewhere,<sup>11</sup> and that I discuss yet elsewhere relative to affirmative action which concerns reparatory wealth redistribution.<sup>12</sup>)

(7) My view of taxation is that it is a relic of a time when the monarch—king, Caesar, tsar, pharaoh, or such—“owned the realm” and collected taxes or rent from those to whom the privilege of living and working in the realm had been extended. Once these sorts of systems are recognized as unjust, the institutions that were natural within them lose their theoretical footing. Taxation becomes extortion—one may work only if one pays, otherwise the government will apply sanctions—no different from the actions of organized criminals.<sup>13</sup>

(8) Rights, as far as I understand them, are prior to liberty—they mark off wherein the individual moral agent decides how to act. Within, for example, our homes, whether we act wildly, naughtily, generously, alertly, obscenely, and so forth, is up to us to decide because we have the right to private property. Whether we speak or remain quiet, write or indulge in writer’s block, is up to us when it is on our property—a radio station, podium, magazine, or newspaper. The right to private property specifies wherein we may act freely.

(9) Sterba admits that the welfare state is coercive—it applies force that is invasive. Punishment, in contrast, isn’t invasive but retaliatory. It is not, strictly speaking, coercion, only force.

(10) Finally, Sterba and I disagree not about the merits of welfare—as in generosity, charity, compassionate conduct, help, assistance, aid, and so forth—but about the merits of the concept of “a right to welfare,” which when applied in public policy deprives one of the jurisdiction over oneself and what one has come to own.

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<sup>11</sup> Tibor Machan, “Human Rights, Political Change, and Feudalism,” in Alan Rosenbaum, ed., *The Philosophy of Human Rights* (Greenwich, CT: Greenwood Press, 1980).

<sup>12</sup> Tibor Machan, “The Injustices of Affirmative Action,” in Robert W. McGee, ed., *Commentaries on Law & Public Policy* (South Orange, NJ: Dumont Institute, 1999).

<sup>13</sup> For an alternative, see my “Dissolving the Problem of Public Goods, Financing Government without Coercive Measures,” in Tibor R. Machan, ed., *The Libertarian Reader* (Lanham, MD: Rowman & Littlefield, 1982).

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Some back-alley situations may require one to ignore a ban on coercive takings.<sup>14</sup> However, the bottom line of all of these points is that a properly conceived civil society is one wherein coercive takings are banned for normal cases.<sup>15</sup>

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<sup>14</sup> I argued this point in my “Prima Facie v. Natural (Human) Rights,” *Journal of Value Inquiry* 10, n. 1 (1976), pp. 119-31, before Sterba and I began our debate. For a general indication of how well people fare, depending upon the degree of economic liberty of a country, see *The Index of Economic Freedom* (Washington, DC: The Heritage Foundation, 2005).

<sup>15</sup> This essay is an edited text of a presentation at the meeting of the American Society for Value Inquiry, April 23, 2004, APA Central Division, Chicago, IL, following the presentation of James P. Sterba’s critical comments on my *The Passion for Liberty*. For the details of Sterba’s position, see James P. Sterba, *Justice: Alternative Perspectives* (Belmont, CA: Wadsworth Publishing Co., 1991), and James Sterba, “Reconciling Conceptions of Justice,” in *Morality and Social Justice*, James Sterba, Tibor Machan, Alison Jaggar, et al. (Lanham, MD: Rowman & Littlefield, 1995).